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 23 CHICAGO PACIFIC CAPITAL, LLC
 24 GOLDSTREAM, LLC
 25 LAWRENCE LEISURE and MARY TOLAN

26
 27 HUGH S. PROCTOR, an individual and SP
 28 TRUST a Nevada Trust,

29 Plaintiffs,

30 vs.

31 CPF RECOVERY WAYS, LLC, a Delaware
 32 limited liability company; CHICAGO PACIFIC
 33 CAPITAL, LLC, an entity with its principal place
 34 of business in Illinois; GOLDSTREAM, LLC, a
 35 Utah limited liability company; NORTH
 36 AMERICAN MANAGEMENT, LLC, a Utah
 37 limited liability company; PARSONS BEHLE &
 38 LATIMER, a Utah professional corporation;
 39 LAWRENCE LEISURE, an individual;
 40 GEOFFREY W. MANGUM, an individual;
 41 JAMES R. PETERSEN, an individual; JOHN
 42 ROBERTSON, an individual; and MARY
 43 TOLAN, an individual,

44 Defendants.

45
 46 No.: 2:14-cv-1693-RFB-PAL

47
 48 DEFENDANT'S MOTION TO
 49 DISMISS FOR LACK OF
 50 PERSONAL JURISDICTION, OR, IN
 51 THE ALTERNATIVE, TO
 52 TRANSFER VENUE

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR LACK OF PERSONAL JURISDICTION, OR,
IN THE ALTERNATIVE, TO TRANSFER VENUE**

Defendants Chicago Pacific Capital, LLC ("CPC"), CPF Recovery Ways, LLC ("CPF"), Goldstream, LLC ("Goldstream"), Lawrence Leisure ("Leisure") and Mary Tolan ("Tolan") (collectively, "Defendants"), by and through their undersigned counsel, move to dismiss this case for lack of personal jurisdiction, or, in the alternative, to transfer this case to the United States District Court for the District of Utah, and in support thereof state as follows:

RELEVANT FACTUAL BACKGROUND

On October 14, 2014, Plaintiffs Hugh S. Proctor ("Proctor") and SP Trust ("SP") filed a 122-count Complaint against the above-captioned defendants in the United States District Court for the District of Nevada. After receiving a demand to withdraw the complaint pursuant to Federal Rule of Civil Procedure, Plaintiffs filed an Amended Complaint on November 5, 2014. The First Amended Complaint ("Complaint") alleges federal copyright infringement as well as fiduciary duty and other common law claims arising from the sale of assets located in Utah, in which the Plaintiff Proctor, through Plaintiff SP, had an interest. Other than Plaintiffs, all of the parties are located in Illinois, Utah or California. (Cmplt, ¶¶ 2-39.) As the Complaint makes clear, none of Defendants reside in, or are incorporated or registered in, the State of Nevada. (Cmplt, *et seq.*) The defendants that sold the assets, *i.e.*, the ones that allegedly infringed Plaintiff Proctor's copyrights and allegedly sold the assets in breach of their fiduciary duties to Plaintiffs, are Utah entities. (*Id.*; Cmplt, Ex. 1 at 3.) The business underlying the Complaint (and in which Plaintiffs allege a minority interest) -- a substance abuse treatment company -- operates facilities and programs in Utah. All of its facilities are located in Utah at 5288 Allendale Drive, Salt Lake City, Utah 84123; 4883 Box Elder Street, Salt Lake City, Utah 84017; and 385 West 4800 South, Murray, Utah 84123. (Cmplt, Ex. 1 at § 11(q).)

The Complaint further alleges that non-movant defendants Petersen and Robertson, with the advice and assistance of their counsel, defendant Parsons Behle Latimer, structured the "Asset Purchase Agreement" for substance abuse treatment centers in Utah to enrich themselves at Plaintiffs' expense, in violation of, *inter alia*, their fiduciary duties to Plaintiffs. (Cmplt, ¶¶ 51-85.) Petersen and Robertson are individuals with "principal residence in the State of Utah" (Cmplt, ¶¶ 23, 30.), and

1 Parsons Behle Latimer "is a professional corporation organized pursuant to the State of Utah."
 2 (Cmplt, ¶¶ 14.) Plaintiffs also claim that Defendants infringed copyrights on material that was
 3 located and used by the substance abuse treatment facilities, all of which were located in the State of
 4 Utah (e.g., drafted material called "Residential Treatment Program Details"). (See, e.g., Cmplt, ¶¶
 5 86-122.)

6 In light of Defendants' tenuous connection to the State of Nevada, counsel for Defendants
 7 asked counsel for Plaintiffs to withdraw the Complaint, rather than put the Court and parties through
 8 extended preliminary motion practice. Plaintiffs' counsel refused, and this motion followed.

9 **ARGUMENT**

10 **I. The Court Should Dismiss Plaintiffs' Action In Its Entirety For Lack Of Personal
 11 Jurisdiction.**

12 Under Federal Rule of Civil Procedure 12(b)(2), a court must dismiss an action in the absence
 13 of personal jurisdiction over the defendants. Fed. R. Civ. P. 12(b). Nevada's long-arm statute and
 14 federal due process guide jurisdictional decisions:

15 Nevada's long-arm statute, NRS 14.065, reaches the limits of due process set by
 16 the United States Constitution. In order for a forum state to obtain personal
 17 jurisdiction over a nonresident defendant, the Due Process Clause of the
 18 Fourteenth Amendment requires that the defendant have minimum contacts with
 19 the forum state such that the maintenance of the suit does not offend "traditional
 notions of fair play and substantial justice." Additionally, a forum state's exercise
 of jurisdiction over a defendant must be reasonable. There are two types of
 personal jurisdiction: general and specific.

20 *Baker v. Eighth Judicial Dist. Court*, 999 P.2d 1020, 1023 (Nev. 2000) (citing *International Shoe Co.*
 21 v. *Washington*, 326 U.S. 310, 316 (1945)) (other citations omitted). Because this Court lacks both
 22 general and specific personal jurisdiction over Defendants -- all of which are nonresidents with no
 23 material connection to Nevada -- it should dismiss Plaintiffs' claims in their entirety.

24 Further, the Plaintiff asserts that the basis of this court's jurisdiction is "pursuant to 28 U.S.C.
 25 § 1338 because the Federal Causes of [action] arise under the copyright laws of the United States"
 26 (Cmplt. At ¶41). Venue for purposes of a copyright action is to be brought where the Defendant
 27 resides or may be found. 28 U.S.C. § 1400(a).¹ This circuit interprets this provision to allow venue

28 1 Plaintiff's counsel is likely aware of this as he was the former CEO of an entity known as

1 in any judicial district where, if treated as a separate state, the defendant would be subject to personal
 2 jurisdiction." *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1126 (9th Cir. 2010)
 3 (emphasis added).

4 **A. The Court Lacks General Personal Jurisdiction Over Defendants.**

5 To have general personal jurisdiction over a Defendant, a Nevada court must find that a
 6 nonresident's activities in Nevada are "substantial" and "continuous and systematic." *Trump v.*
 7 *Eighth Judicial Dist. Court*, 109 Nev. 687, 699 (Nev.1993). "The level of contact with the forum
 8 state necessary to establish general jurisdiction is high." *Budget Rent-A-Car v. Eighth Judicial Dist.*
 9 *Court*, 108 Nev. 483, 485 (Nev.1992) (refusing to find general jurisdiction over California defendant
 10 even though defendant rental car agency did business in the state and had a physical office). *See also*
 11 *Congoleum Corp. v. DLW Aktiengesell-schaft*, 729 F.2d 1240, 1242-43 (9th Cir. 1984) (a foreign
 12 corporation's sales and marketing efforts in California, including solicitation of orders, promotion of
 13 products to potential customers through the mail and through showroom displays, and attendance at
 14 trade shows and sales meetings, were insufficient to establish general jurisdiction in California);
 15 *Cubbage v. Merchant*, 744 F.2d 665, 667-69 (9th Cir. 1984) (California lacked general jurisdiction
 16 over Arizona doctors who had a significant number of patients in California, used a California
 17 medical insurance system, and had a telephone directory listing that reached California).

18 There is nothing "substantial," "continuous" or "systematic" about Defendants' contacts with
 19 the State of Nevada. Indeed, there are almost no "contacts" with Nevada at all, as highlighted by the
 20 Complaint. The only allegations of Defendants' connection to the state are that Defendants' alleged
 21 breaches of copyright and other laws caused injury to Plaintiffs located in Nevada, which, as
 22 explained below, are insufficient to establish even specific personal jurisdiction, much less general
 23 jurisdiction. The defendants in this case are non-Nevada residents or corporations who conducted
 24 their business -- the purchase, sale and/or operation of substance abuse treatment facilities -- in Utah
 25 (and to some extent, Illinois and Delaware, where two of the defendants are domiciled). The present
 26 facts fall far short of supporting general jurisdiction over these out-of-state defendants.

27
 28 Righthaven, a copyright infringement firm that purchased copyrights with the intent of monetizing
 them through litigation.

1 **B. The Court Lacks Specific Personal Jurisdiction Over Defendants.**

2 Absent general jurisdiction, the Ninth Circuit uses a three-prong test to determine if specific
 3 jurisdiction exists and complies with due process: "(1) the defendant must have purposely availed
 4 itself of the privilege of conducting activities in the forum; (2) the plaintiff's claim must arise out of
 5 [those activities in the forum]; and (3) the exercise of jurisdiction must be reasonable." *Shute v.*
 6 *Carnival Cruise Lines*, 897 F.2d 377, 381 (9th Cir. 1990). In attempting to establish Defendants'
 7 contacts with the state, Plaintiffs allege that Defendants "knew or should have known that [Plaintiffs]
 8 would experience damages [arising from their alleged breaches] in Nevada" and that Defendants
 9 "knew or had reason to know that such infringement and misappropriation would cause Proctor
 10 damage in Nevada." (See, e.g., Cmplt, ¶¶ 46, 48.) In other words, the Court should exercise
 11 jurisdiction because Defendants' actions purportedly caused Plaintiffs to be injured in Nevada. The
 12 Ninth Circuit has made clear, however, that the Nevada long-arm statute does not extend to
 13 defendants who merely "caus[e] injury within the state [of Nevada]":

14 The Nevada long-arm statute involved in the instant suit contains no such
 15 "causing of injury within the state" provision. Nev. Rev. Stat. § 14.065 **clearly
 16 contemplates that only causes of action "arising from" enumerated "acts"
 which took place "within" Nevada may be reached.** There is no indication that
 any "acts" material to A.G.'s two California loans took place in Nevada.

17 *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 417 (9th Cir. 1977) (emphasis added)
 18 (quoting Nev. Rev. Stat. § 14.065). *See also Wood v. Santa Barbara Chamber of Commerce, Inc.*,
 19 507 F. Supp. 1128, 1140 (D. Nev. 1980) (dismissing for lack of personal jurisdiction because "[t]here
 20 simply was no act within Nevada out of which [the claim] could have arisen"). Put another way, a
 21 court may find specific personal jurisdiction "only where the cause of action arises from the
 22 defendant's contacts with Nevada." *Budget Rent-A-Car*, 108 Nev. 483, 486 (Nev. 1992) (emphasis
 23 added).

24 As in *Wells Fargo* and *Wood*, there is no indication in the Complaint (indeed no factual basis
 25 at all) that Defendants "conduct[ed]" any "activities" in Nevada, or that Plaintiffs' claims arise out of
 26 "acts" "material" to Plaintiffs' allegations. Instead, as explained above, all of the defendants' alleged
 27 "acts," whether material to Plaintiffs' allegations or not, occurred in the State of Utah (or in limited
 28 instances, Illinois or Delaware). According to Plaintiffs, non-movant defendants Petersen and

1 Robertson, with the advice and assistance of their counsel, defendant Parsons Behle Latimer,
 2 structured the "Asset Purchase Agreement" for substance abuse treatment centers *in Utah* to enrich
 3 themselves at Plaintiffs' expense, in violation of, *inter alia*, their fiduciary duties to Plaintiffs.
 4 (Cmplt, ¶¶ 51-85.) Further, both Petersen and Robertson are individuals with "principal residence in
 5 the State of Utah" (Cmplt, ¶¶ 23, 30.), and Parsons Behle Latimer "is a professional corporation
 6 organized pursuant to the State of Utah." (Cmplt, ¶¶ 14.) Plaintiffs also claim that Defendants
 7 infringed copyrights on material that was located and used by the substance abuse treatment facilities,
 8 which are located in the State of Utah (*e.g.*, drafted material called "Residential Treatment Program
 9 Details"). (*See, e.g.*, Cmplt, ¶¶ 86-122.) There is simply nothing in the Complaint even to suggest
 10 that Defendants (or any of the other defendants) purposely conducted activities in Nevada or, more
 11 importantly, that Plaintiffs' claims arise out of those alleged activities. Accordingly, the Court should
 12 decline to find specific personal jurisdiction over Defendants.

13 **II. If The Court Does Not Dismiss Plaintiffs' Action, It Should Transfer The Case To The
 14 District of Utah.**

15 A district court may transfer any civil case to any other district "where it might have been
 16 brought . . . for the convenience of the parties and witnesses, in the interest of justice." 28 U.S.C. §
 17 1404(a). Deciding a motion to transfer requires a two-part inquiry. First, the Court should determine
 18 if the case could have been brought in the transferee court. Second, the Court must weigh
 19 "convenience and fairness" factors, which are set forth in *Jones v. GNC Franchising, Inc.*, 211 F.3d
 20 495 (9th Cir. 2000), to determine the superior forum. Because the Asset Purchase Agreement was
 21 negotiated and executed almost entirely by parties in Utah, and because the substance abuse
 22 treatment facilities that allegedly misappropriated Plaintiffs' copyrights are located in Utah, the
 23 "interests of justice" favor transferring this case to the District of Utah.

24 **A. The Complaint Could Have Been Brought In The State Of Utah.**

25 Before weighing the convenience and fairness factors favoring transfer to Utah, the Court
 26 should determine if Plaintiffs could have brought this action in Utah in the first place. "Transfer is
 27 appropriate when venue is proper and personal jurisdiction exists over the defendant in the transferee
 28 jurisdiction." *Editorial Planeta Mexicana, S.A. de C.V. v. Argov*, 2012 U.S. Dist. LEXIS 102029, at

1 *7 (D. Nev. July 23, 2012) (citing *Hoffman v. Blaski*, 363 U.S. 335, 344, 80 S. Ct. 1084, 4 L. Ed. 2d
 2 1254 (1960)). For venue to be proper, a civil action must be brought in "a judicial district in which a
 3 substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1331
 4 (b)(2). As explained in further detail in Section II, there is no question Plaintiffs could have (and
 5 should have) brought this action in Utah.

6 1. The Appropriate Venue For Copyright Infringement Claims Is The District In
 7 Which The Defendant Resides

8 The Plaintiff asserts that the basis of this court's jurisdiction is "pursuant to 28 U.S.C. § 1338
 9 because the Federal Causes of [action] arise under the copyright laws of the United States" (Cmplt,
 10 ¶ 41). Because of a lack of personal jurisdiction, however, the Court also has grounds to dismiss
 11 Plaintiffs' copyright claims based upon improper venue. "In copyright infringement actions, venue is
 12 proper "in the district in which the defendant . . . resides or may be found." 28 U.S.C. § 1400(a).
 13 "This circuit interprets this provision to allow venue in any judicial district where, if treated as a
 14 separate state, the defendant would be subject to personal jurisdiction." *Brayton Purcell LLP v.
 15 Recordon & Recordon*, 606 F.3d 1124, 1126 (9th Cir. 2010) (emphasis added). As explained above,
 16 the Court does not have personal jurisdiction over Defendants.

17 If the Court dismisses the copyright claims for improper venue, it should decline Plaintiffs'
 18 request to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims. (Cmplt,
 19 ¶ 42.) *See* 28 U.S.C. § 1337(c) ("The district courts may decline to exercise supplemental
 20 jurisdiction over a claim under subsection (a) . . . the district court dismissed all claims over which it
 21 had original jurisdiction[.]").

22 2. A Utah Court Would Have Jurisdiction Over All Defendants.

23 The U.S. District Court for the District of Utah would have personal jurisdiction over the
 24 defendants. Three of the five individual defendants are residents of the State of Utah. (Cmplt, ¶¶ 22-
 25 30.) Three of the five corporate defendants are organized under the laws of the State of Utah.
 26 (Cmplt, ¶¶ 6, 11, 14.) As explained below, the business giving rise to the relationships and conflicts
 27 alleged in the Complaint is located in Utah. Utah's jurisdiction over these defendants is clear.

28 ////

1 The four non-Utah defendants -- CPF Recovery Ways, LLC ("CPF"), CPC (the movant),
 2 Lawrence Leisure ("Leisure") and Mary Tolan ("Tolan") -- have "sufficient minimum" contacts with
 3 the state such that a Utah court could exercise specific personal jurisdiction. *Synergetics v. Marathon*
 4 *Ranching Co.*, 701 P.2d 1106, 1110 (Utah 1985) ("Due process requires that before a court can
 5 exercise specific personal jurisdiction over a nonresident defendant, the defendant must have had
 6 minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of
 7 fair play and substantial justice.'"). A defendant must have sufficient minimum contacts to be subject
 8 to Section 78-27-24(1) of Utah's long-arm statute:

9 Any person . . . whether or not a citizen or resident of this state, who in person or
 10 through an agent does any of the following enumerated acts, submits himself, and if
 11 an individual, his personal representative, to the jurisdiction of the courts of this state
 12 as to any claim arising from:

- 13 (1) The transaction of any business within this state;
- 14 (2) contracting to supply services or goods in this state;
- 15 (3) the causing of any injury within this state whether tortious or by breach of
 warranty;
- 16 (4) the ownership, use or possession of any real estate situated in this state[.]

17 "Transaction of business within this state" is defined in section 78-27-23(2) as "[the] activities of a
 18 nonresident person, his agents, or representatives in this state which affect persons or businesses
 19 within the State of Utah." As the Complaint and attached exhibits make clear, all Defendants
 20 engaged in the purchase and/or sale of "substance abuse in patient facilities" located in Utah, *i.e.*,
 21 "activities . . . which affect persons or business within the State of Utah."² This plainly fits the
 22 definition of "transaction of business within this state" for Utah and not Nevada. Moreover, because
 23 the claims involve the "possession of real estate" (the Brunswick property) and the "supply [of]
 24 services" (substance abuse treatment) within the State of Utah, they fit other grounds for long-arm
 25 jurisdiction also.

26 ///

27 2 The facilities are located at these addresses: 5288 Allendale Drive, Salt Lake City, Utah
 28 84123; 4883 Box Elder Street, Salt Lake City, Utah 84017; and 385 West 4800 South, Murray, Utah
 84123. (Cmplt. Ex. 1 at § 11(q).)

1 3. Venue Would Be Proper In Utah Under Section 1404(a).

2 In addition to proper jurisdiction and proper venue under the Copyright Act, venue would be
 3 generally appropriate in Utah because a substantial part of the events giving rise to the claims
 4 occurred in that state. *See* 28 U.S.C. § 1404(a). As set forth above, the Complaint alleges that
 5 Defendants Petersen and Robertson, with the advice and assistance of their counsel, Defendant
 6 Parsons Behle Latimer, structured the "Asset Purchase Agreement" for substance abuse treatment
 7 centers in Utah to enrich themselves at Plaintiffs' expense, in violation of, *inter alia*, their fiduciary
 8 duties to Plaintiffs. (Cmplt, ¶¶ 51-85.) Plaintiffs also claim that Defendants infringed copyrights on
 9 material that was located and used by the substance abuse treatment facilities, which were primarily
 10 located in the State of Utah (e.g., drafted material called "Residential Treatment Program Details").
 11 (See, e.g., Cmplt, ¶¶ 86-118.) Further, both Petersen and Robertson are individuals with "principal
 12 residence in the State of Utah" (Cmplt, ¶¶ 23, 30.), and Parsons Behle Latimer "is a professional
 13 corporation organized pursuant to the State of Utah." (Cmplt, ¶¶ 14.) Because a "substantial part"
 14 (indeed the vast majority) of events occurred in the State of Utah, venue in the District of Utah would
 15 be proper under 28 U.S.C. §1404(a).

16 **B. The *Jones* "Convenience and Fairness" Factors Favor Transfer To Utah.**

17 After determining that jurisdiction and venue would be proper in the transferee forum, the
 18 Court must decide if the "interests of justice" encourage transfer. "Multiple convenience and fairness
 19 factors may be weighed to determine whether transfer would be 'in the interests of justice' as required
 20 by Section 1404(a), including:

21 (1) the location where the relevant agreements were negotiated and executed, (2) the
 22 state that is most familiar with the governing law, (3) the plaintiff's choice of forum,
 23 (4) the respective parties' contacts with the forum, (5) the contacts relating to the
 24 plaintiff's cause of action in the chosen forum, (6) the differences in the costs of the
 25 litigation in the two forums, (7) the availability of compulsory process to compel
 26 attendance of unwilling non-party witnesses, and (8) the ease of access to sources of
 27 proof.

28 *Editorial Planeta Mexicana, S.A. de C.V. v. Argov*, 2012 U.S. Dist. LEXIS 102029, at *7 (D. Nev.
 29 July 23, 2012) (quoting *Jones v. GNC Franchising, Inc.*, 211 F.3d 495 (9th Cir. 2000)). Notably, the
 30 only factor favoring venue in Nevada is Plaintiffs' choice to sue there -- but, as explained below, the
 31 Court should give little deference to that choice. Each of the remaining factors strongly favors venue

1 in the District of Utah, where the Asset Purchase Agreement was negotiated, where the majority of
 2 Defendants are located and where the majority of the assets at issue, including the substance abuse
 3 treatment business itself, are located.

4 1. The Asset Purchase Agreement Was Negotiated And Executed In Utah.

5 "Because the relevant agreements were negotiated . . . by parties situated in [the transferee
 6 forum], this consideration weighs in favor of transfer." *Argov*, 2012 U.S. Dist. LEXIS 102029, at
 7 *11. According to Plaintiffs, Defendants Petersen and Robertson "were the natural persons who
 8 controlled (either directly or indirectly) the Sellers at all relevant times" during the negotiation and
 9 execution of the Asset Purchase Agreement. (Cmplt, ¶ 52.) Petersen and Robertson are Utah
 10 residents who worked with Utah attorneys -- Defendants Parsons Behle & Latimer -- during the
 11 negotiation process of the Asset Purchase Agreement. (Cmplt, ¶ 80.)³ It is evident from the
 12 Complaint that the key agreement in this case was negotiated and executed almost exclusively in the
 13 State of Utah.

14 2. A Court Will Likely Apply Delaware Or Utah Law To Plaintiffs' Common
 15 Law Claims.

16 The second factor is familiarity with the governing law. Plaintiffs maintain that Nevada law
 17 will govern its non-federal claims (e.g., "breach of loyalty," "conversion"), which means a Nevada
 18 court would be most familiar with the governing law. Plaintiff's choice-of-law assertion is incorrect.
 19 First, a court might interpret the Asset Purchase Agreement's choice-of-law provision ("this
 20 Agreement and the rights of the Parties shall be governed and construed in accordance with the laws
 21 of the State of Delaware") to mean that Delaware law governs Plaintiffs' tort claims, which clearly
 22 arise from or are related to the Agreement. *See also Pinnacle Fitness & Rec. Mgmt., LLC v. Jerry &*
Vickie Moyes Family Trust, 844 F. Supp. 2d 1078, 1097 (S.D. Cal. 2012) ("[A] valid choice-of-law
 23 clause, which provides that a specified body of law "governs" the "agreement" between the parties,
 24 encompasses all causes of action arising from or related to that agreement, regardless of how they are
 25 characterized, including tortious breaches of duties emanating from the agreement or the legal
 26

27
 28 3 It is also clear that no negotiation of the Asset Purchase Agreement occurred in Nevada.

1 relationships it creates.") Because Plaintiffs' non-federal claims "arise from or relate to" the Asset
 2 Purchase Agreement (*i.e.*, Plaintiffs argue it was structured to injure them), a Nevada court would
 3 likely apply the Delaware choice-of-law provision. Neither Nevada nor Utah is better at applying
 4 Delaware law.

5 Second, Nevada choice-of-law rules strongly suggest that if this Court declined to apply
 6 Delaware law, it would apply Utah law instead. *Rio Props. v. Stewart Annoyances, Ltd.*, 2006 U.S.
 7 Dist. LEXIS 64670, at *15 (D. Nev. Sept. 8, 2006) ("A federal court sitting in diversity jurisdiction
 8 applies the forum state's choice-of-law rules."). "Nevada's choice-of-law jurisprudence in tort actions
 9 is governed by the most significant relationship test, as provided by the Restatement (Second) of
 10 Conflict of Laws § 145[.]" *Kawamura v. Boyd Gaming Corp.*, 2014 U.S. Dist. LEXIS 17727, at *12
 11 (D. Nev. Feb. 12, 2014). The Second Restatement provides that:

12 (2) Contacts to be taken into account in applying the principles of § 6 to determine the
 13 law applicable to an issue include:

- 14 (a) the place where the injury occurred,
- 15 (b) the place where the conduct causing the injury occurred,
- 16 (c) the domicil, residence, nationality, place of incorporation and place of business of
 the parties, and
- 17 (d) the place where the relationship, if any, between the parties is centered.

18 These contacts are to be evaluated according to their relative importance with respect
 19 to the particular issue.

20 Restat. 2d of Conflict of Laws, § 145. All of these factors favor applying Utah law. The injury from
 21 the alleged breaches of fiduciary duty and conversion clearly occurred in Utah -- it was Plaintiffs'
 22 interest in these Utah companies that was allegedly "converted" by Defendants' actions (which
 23 Plaintiffs alleged also amounted to a breach of fiduciary duty). The alleged "conduct" was the
 24 purchase and sale of assets *located in Utah by six Utah defendants* (including two, Peterson and
 25 Roberston, who Plaintiffs claim "controlled" the transaction) and *no Nevada defendants*. This also
 26 speaks to subsection (d) of Restatement Section 145 -- six of the ten defendants are Utah residents or
 27 companies, and none of the defendants hail from or have any connection to Nevada. This case's sole
 28 connection to Nevada is because one Plaintiff is a resident of Nevada and the other is a Nevada trust.

1 Finally, the parties' "relationship" is clearly "centered" in Utah. It can be inferred from the Complaint
 2 that SP Trust was a "minority owner" of the assets subject to the Asset Purchase Agreement.⁴ Those
 3 assets were located entirely in Utah and operated by the substance abuse treatment businesses with
 4 Utah locations. Moreover, Plaintiffs' alleged copyrighted material was also located in Utah, used by
 5 the substance abuse treatment businesses in the treatment of patients. There is no doubt that the
 6 parties' relationship was "centered" in the State of Utah.

7 By applying its choice-of-law rules to Plaintiffs' non-federal claims, a federal Nevada court
 8 sitting in diversity would likely select Utah law as the governing law based on Utah's far more
 9 significant relationship with the facts of this case. *See Lucarelli v. DVA Renal Healthcare, Inc.*, 2008
 10 U.S. Dist. LEXIS 6310, at *12 (D. Nev. Jan. 10, 2008) (granting motion to transfer to Southern
 11 District of Ohio because "Ohio also has the most significant relationship to this case, and
 12 consequently, Ohio tort law applies"). Utah courts are best suited to apply Utah law.

13 3. Plaintiffs' Choice Of Forum Should Be Given Little Or No Deference Because
It Is The Sole Connection Between This Case And The State Of Nevada.

15 "Deference [to a plaintiff's choice of forum] is substantially reduced . . . where the forum
 16 lacks a significant connection to the activities alleged in the complaint." *Argov*, 2012 U.S. Dist.
 17 LEXIS 102029, at *12. *See also Lucarelli*, 2008 U.S. Dist. LEXIS 6310, at *12 ("While Plaintiffs
 18 chose to file this suit in Nevada, the 'operative facts' of the case did not occur in Nevada, and so
 19 Plaintiffs' preference is entitled to only minimal consideration."). As explained already, the
 20 "operative facts" of this action occurred almost entirely in Utah. The only connection to Nevada is
 21 Plaintiffs' place of residency. All Defendants are non-Nevada individuals or entities, six Defendants
 22 are Utah residents or companies, the key agreement was negotiated and executed in Utah, and the
 23 alleged conduct occurred in Utah. The substance abuse treatment centers around which these claims
 24 revolve are in Utah. The law is clear that venue cannot rest solely upon the Plaintiffs' choice,
 25 especially in the face of such an overwhelming connection to another state.

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28 4 Curiously this is never expressly alleged in the Complaint.

1 4. It Will Be Cheaper To Litigate This Case In Utah Because Most Of The
 2 Defendants Are Located There And Utah Has Greater Access To Sources Of
 3 Proof.

4 Another factor is the difference in costs of litigation between the two forums. Six of the ten
 5 defendants are Utah based, and several other companies mentioned in the Complaint are Utah
 6 companies. (*See, e.g.*, Cmplt, ¶¶ 4-37.) Moreover, Plaintiff Hugh S. Proctor is the only party out of
 7 eleven located in Nevada. As the negotiating attorneys, most of the defendants and the physical
 8 assets of the substance abuse treatment business are situated in Utah, potential sources of discovery
 9 as to all of Plaintiffs' claims are more likely to be in Utah. Conversely there will be no discovery
 10 required in Nevada, other than perhaps Mr. Proctor's deposition and documents under his control. As
 11 this Court found in another case, "situating this case in Nevada would cause needless time and
 12 discovery costs for both parties as well as potential witnesses." *Argov*, 2012 U.S. Dist. LEXIS
 13 102029, at *16.

14 5. Unwilling Non-Party Witnesses Are More Likely To Reside In Utah Than
 15 Nevada.

16 A final *Jones* factor considers the availability of compulsory process to compel attendance of
 17 unwilling non-party witnesses. Because the "operative facts" of this case occurred in Utah, any
 18 unwilling non-party witnesses are more likely to live there than Nevada. A Nevada court would have
 19 no ability, however, to compel the presence of a non-party living more than 100 miles away, which
 20 would include most if not all Utah-based witnesses. By contrast, a Utah court would have a stronger
 21 ability to compel non-party witnesses to answer subpoenas pursuant to Fed. R. Civ. P. 45(c). This is
 22 yet another reason this Court should transfer this action to the District of Utah.

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1 **CONCLUSION**

2 Because this Court lacks personal jurisdiction over Defendants and because venue for the
3 copyright claims is only proper in Utah pursuant to 28 U.S.C §1400(a), Defendants respectfully
4 requests that this Court dismiss the Complaint in its entirety pursuant to Federal Rule of Civil
5 Procedure 12(b)(2), or, in the alternative, transfer venue to the District of Utah.

6 DATED November 13, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2014, the foregoing DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR, IN THE ALTERNATIVE, TO TRANSFER VENUE served on the party(ies) via electronic service pursuant to Fed.R.Civ.P.5(b), and Section IV of District of Nevada Electronic Filing Procedures and/or by mailing a copy thereof, first class mail, postage prepaid, to:

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